

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ETHAN ALLEN GLOBAL, INC.

Plaintiff,

v.

PEOPLES AMERICANA, INC.,
JJ PEOPLES, VAN DEWALD, and
HERSCHEL D. PRUITT

Defendants.

Case No.

07 Co 7389 (SES)

AUGUST 20, 2007

**MOTION FOR EMERGENCY EX PARTE TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION**

Pursuant to Federal Rule of Civil Procedure 65(b), plaintiff, Ethan Allen Global, Inc. ("Ethan Allen"), by and through its undersigned attorneys, respectfully requests that this Court enter an emergency ex parte temporary restraining order ("TRO") and issue an order to show cause for a preliminary injunction hearing against Defendants Peoples Americana, Inc., JJ Peoples, Van De Wald, and Herschel D. Pruitt.

Plaintiff Ethan Allen – the sole owner of the ETHAN ALLEN trademarks and associated rights – will suffer immediate and irreparable injury, loss and damage if the requested TRO does not enter. Defendants have advertised and intend to hold a "Furniture & Rug Auction" at a former Ethan Allen location starting at 1:00 p.m. on August 20 and August 21. Plaintiff has not authorized this auction, nor consented to the use of its trademarks and brand name during the auction. During the first two days of this auction on August 18 and 19, the ETHAN ALLEN trademarks and brand name were displayed prominently and without authorization. Many of the products being offered for sale at the auction were not Ethan Allen products, and were inferior in

quality to Ethan Allen's signature home furnishings. The continued operation of this unauthorized "Furniture & Rug Auction" will irreparably harm Ethan Allen's goodwill and reputation as a distributor and seller of high-quality home furnishings, and dilute the value of the ETHAN ALLEN trademark. The harm to Ethan Allen from the continuation of this auction is immeasurable.

Plaintiff Ethan Allen is likely to succeed on the merits of its claims of trademark infringement, false designation of origin and trademark dilution, as set forth in its Verified Complaint. Defendants are intentionally and fraudulently trading on the goodwill and reputation of the ETHAN ALLEN trademarks and brand name, and their actions are likely to cause consumer confusion – the hallmark of a trademark infringement claim. Indeed, the Second Circuit has held that "[i]n trademark disputes, a showing of likelihood of confusion establishes both a likelihood of success on the merits and irreparable harm." *Louis Vuitton Malletier v. Burlington Coat Factory Warehouse*, 426 F.3d 532, 537 (2d Cir. 2005) (reversing district court's denial of preliminary injunction where plaintiff amply demonstrated the likelihood of consumer confusion).

The public interest will also be served by enjoining Defendants from deceiving, misleading and confusing consumers into believing that the "Furniture & Rug Auction" is sanctioned by Ethan Allen and contains exclusively Ethan Allen products.

Accordingly, plaintiff Ethan Allen respectfully asks for an emergency temporary restraining order closing down the remaining two days of this illegal and fraudulent auction and enjoining Defendants from trading on and misappropriating the ETHAN ALLEN trademarks and brand name in the future. A form of the proposed TRO is attached to this motion.

In addition, plaintiff requests the entry of an order to show cause, in the form attached, for defendants to appear and show cause why a preliminary injunction should not enter.

In support of this motion, Plaintiff submits a Verified Complaint with attachments, the Affidavit of Jack DeKorne with attachments, the Affirmation of Erika L. Amarante, and a memorandum of law in support.

Respectfully submitted,

PLAINTIFF
ETHAN ALLEN GLOBAL, INC.

By: 

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